HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

Writ Petition No.6314 of 2007

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Between:

Dr. C.R. Reddy Memorial School,
Rep. by its Correspondent,
V. Chandrasekhar Reddy,
Mitoor, Chittoor.

…….. Petitioner

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And

Chittoor Municipality,
Rep. by its Commissioner,
Chittoor.

……. Respondent

:: **O R D E R** ::

Counsel for the petitioner : Shri P. Govind Reddy

17.04.2007

Per G.S. SINGHVI, C.J.

In this petition filed by Dr. C.R. Reddy Memorial School through its Correspondent Shri V. Chandrasekhar Reddy, prayer has been made for quashing demand notice dated 07.11.2005 issued by the Commissioner of Chittoor Municipality (the respondent herein) for levy of property tax in terms of Section 91 and paragraphs 29 to 34 of Schedule II of the Andhra Pradesh Municipalities Act, 1965 (for short, 'the Act').

In the affidavit filed by him, Shri V. Chandrasekhar Reddy has averred as under:

i) that the petitioner is an educational institution established by

Smt. Lakshmamma and Sri Sreenivasulu Reddy Educational Society, Chittoor;

ii) that the school is recognised by District Educational Officer, Chittoor; and

iii) that even though in terms of Section 88 (c) of the Act, the educational institutions are exempt from property tax, the respondent has created the impugned demand.

In paragraph 5 of his affidavit, Shri Chandra Sekhar Reddy has averred that after issue of the impugned demand notice, he met the respondent and requested him to cancel the same on the ground that the premises are being used for charitable purpose, but without considering this issue, the officer concerned issued notice dated 9-12-2005. For the sake of reference, paragraph 5 of the affidavit of Shri Chandra Sekhar Reddy is reproduced below:

> "5. I submit that the petitioner institution is being run purely on charitable basis serving the cause of education and therefore exempt from property tax under Section 85 of the Act. Therefore, the respondent is not right in issuing the impugned demand notice levying property tax in respect of the premises in which the petitioner's school is being run. I submit that after issuance of the impugned demand notice, I met the respondent and requested him to cancel the same in view of the fact that the premises is being used for a charitable purpose. He informed me that he would consider the same and let me know his decision. However, to our surprise, the respondent issued notice on 9-12-2005 calling upon me to pay the tax mentioned in the demand notice or else the property will be put to auction. Therefore, it is evident that the respondent did not consider the issue as to whether the premises is being used for a charitable purpose or not before and after issuing the impugned demand notice. I submit that the petitioner also stands on the same footing as that of the institutions in W.P.No.4214 of 2006 and batch. In view of the same, I am constrained to approach this Hon'ble Court. I submit that if a direction as given in W.P.No.4214 of 2006 and batch dt.28.12.2006 is given in this writ petition also, the petitioner will be able to establish before the respondent that it is a charitable institution exempt from

paying the property tax. I submit that pursuant to the Full Bench judgment, several writ petitions were disposed in terms of the said judgment vide W.P.No.3189 of 2007, W.P.No.3970 of 2007 and W.P.No.4493 of 2007."

We have heard Shri P. Govind Reddy, learned counsel for the petitioner and perused the record. We have also gone through the judgment dated 28-12-2006 of the Full Bench in Writ Petition No.4214 of 2006 – Kakinada Education Society, Kakinada v. Kakinada Municipal Corporation and batch.

While dealing with the challenge to demand notices similar to the one impugned in the writ petition, the Full Bench noted the unamended and amended Section 88 of the Act and rejected the argument advanced on behalf of the petitioners that the premises belonging to every recognised educational institution is exempt from property tax. The Full Bench held that only those educational institutions are entitled to exemption whose premises are used for charitable purposes. The ratio of the judgment of the Full Bench is extracted below:

> "… If the word "including" is read along with the word "and", which is found in between 'places' and 'buildings', it becomes crystal clear that recognized educational institutions shall be exempt from tax where the educational institutions which included hostels, public buildings and places used for the charitable purpose or for the purpose of sheltering destitute or animals and libraries and playgrounds which are open to the public. There was no need for the legislature to use the word "including", if the intention of the legislature was to exempt all the educational institutions. Therefore, in our view, all the recognized educational institutions including hostels, public buildings and places used for charitable purposes are exempt under Section 85 of the Act provided those institutions, hostels, public buildings and places are used for charitable purposes. That the charitable purpose is necessary only for the places other than recognized institutions as suggested by Mr. C. Kondanda Ram, learned counsel, is, according to us, not correct view. However, it will always be a question of fact whether a particular institution is charitable institution or not.

> Therefore, while answering the reference in the terms as mentioned hereinabove, we make it clear that we have not gone into the question as to whether the petitioners' institutions are charitable institutions or not."

In the context of the judgment of the Full Bench, we enquired from the learned counsel whether, after receiving the demand notice, the Correspondent of the petitioner made any representation to the concerned authority of the respondent Municipality and produced documents to show that its case is covered by the exemption clause contained in Section 88 (1)(c) of the Act, as interpreted by the Full Bench. In reply, Shri P. Govind Reddy invited our attention to the averments contained in paragraph 5 and submitted that personal meeting of the Correspondent with the officers of the respondent should be treated as a representation made against the levy of property tax. In our opinion, there is no merit in the submission of the learned counsel. The burden to prove that its case falls within the ambit of exemption clause enshrined in Section 88 (1)(c) of the Act is on the petitioner, which is required to produce evidence to show that its premises are used for charitable purposes. A vague, bald and cryptic averment contained in the affidavit that the Correspondent had met the respondent cannot be treated as sufficient for accepting the petitioner's claim for exemption in terms of the judgment of the Full Bench moreso because, the deponent has neither disclosed the name of the person whom he met nor he has disclosed the date of meeting. That apart, no evidence is shown to have been produced before the Commissioner of the respondent Municipality to prove that the premises of the educational institution are being used for charitable purpose.

We are further of the view that the writ petition is liable to be dismissed because the petitioner has not fulfilled the requirement of demand for justice as specified in **Kamini Kumar Das Choudhury v. State of W.B.**[1] and **Amrit Lal Berry, K.N. Kapur v. Collector of**

Central Excise Central Revenue[2]. Before this Court also, the petitioner has not produced any evidence to show that its premises are being used for charitable purpose. Therefore, its claim for exemption in terms of Section 88 (1)(c) of the Act cannot be entertained.

There is another reason for our disinclination to entertain the petitioner's prayer. The notice impugned in the writ petition can be appealed against under Rule 22(1) of Taxation and Finance Rules. The remedy of appeal available to the petitioner has to be treated as an effective alternative remedy in view of the law laid down by the Supreme Court in **A.V. Venkateshwaran v. R.S. Wadhwani**[3], **Thansingh Nathmal v. Superintendent of Taxes**[4], **Baburam v. Zilla Parishad**[5], **Champa Lal v. I.T. Commissioner**[6], **J.M. & Co. v. Agricultural I.T. Officer, Assam**[7], **C.I.T. v. Ramendra Nath Ghosh**[8], **Swadeshi Cotton Mills Co. Ltd. v. Govt. of U.P.**[9], **Gujarat University v. N.U. Rajguru**[10], **State of H.P. v. Raja Mahendra Pal**[11], **L.L. Sudhakar Reddy v. State of A.P.**[12], **State of Bihar v. Jain Plastics & Chemicals Ltd.,**[13], **Harbanslal Sahnia v. Indian Oil Corporation Ltd.,**[14], **ABL International Ltd. v. Export Credit Guarantee Corporation of India Ltd.,**[15] **Titaghur Paper Mills Co. Ltd. v. State of Orissa**[16] and **Assistant Collector, Central Excise v. Dunlop India Ltd.**[17] and there is no extraordinary reason for making a departure from the settled law that High Court will not entertain writ petition under Article 226 of the Constitution of India, if an effective alternative remedy is available to the petitioner.

For the reasons stated above, the writ petition is dismissed. However, liberty is given to the petitioner to represent its cause before the competent authority of the Municipality for grant of exemption in

terms of Section 88(1)(c) of the Act.

As a sequel to dismissal of the writ petition, W.P.M.P.No. 8064 of 2007 filed by the petitioner for interim relief is disposed of as infructuous.

G.S.SINGHVI, C.J.

C.V.NAGARJUNA REDDY, J.

17.04.2007
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[1] AIR 1972 SC 2060
[2] AIR 1975 SC 538
[3] AIR 1961 SC 1506
[4] AIR 1964 SC 1419
[5] AIR 1969 SC 556
[6] AIR 1970 SC 645
[7] AIR 1970 SC 1980
[8] (1972) 4 SCC 379
[9] (1975) 4 SCC 378
[10] AIR 1988 SC 66
[11] (1999) 4 SCC 43
[12] (2001) 6 SCC 634
[13] (2002) 1 SCC 216
[14] (2003) 2 SCC 107
[15] (2004) 3 SCC 553
[16] (1983) 2 SCC 433
[17] (1985) 1 SCC 260